

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

WHITNEY TYUS,

Plaintiff,

v.

No. 1:24-cv-01005-STA-jay

PORTFOLIO RECOVERY  
ASSOCIATES, LLC,

Defendant.

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**ORDER**

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On February 2, 2024, Defendant filed a Motion for Permission to File a CD of Telephone Call Recordings. ECF No. 9. In that Order, Defendant represented to the Court that the Motion was unopposed. ECF No. 9 at ¶ 7. Because the Motion appeared to be unopposed, the Court granted the Motion and directed Defendant to file the audio recordings no later than February 19, 2024. ECF No. 10.

Before the Court now is Plaintiff's Motion to Strike Defendant's Motion. ECF No. 14. Plaintiff informs the Court that "she did object to" the Motion. ECF No. 14 at ¶ 4. Included in Plaintiff's Motion to Strike is an Exhibit showing that she responded to Defense counsel's consultation regarding the motion with the following statement: "I *do* object to the relief you are requesting." ECF No. 14-3 at 2 (emphasis added).

Defense counsel has responded to Plaintiff's Motion to Strike with a sincere apology to both Plaintiff and the Court. ECF No. 15 ¶¶ 11-12. Defense counsel states in the Response that "[u]nfortunately, undersigned counsel inexcusably misread Ms. Tyus's . . . email as . . . 'I *do not*

object to the relief you are requesting’ and on February 2, 2024, improperly filed the Motion as unopposed.” ECF No. 15 at ¶ 9. Defendant seeks to withdraw the unopposed motion and asks the Court to instead read the remainder of the filing as an opposed Motion. ECF No. 15 at 1.

The Court takes this opportunity to note that while in the practice of law mistakes will be made, Defense counsel owes a duty of candor to the Court. These types of errors affect the resolution of cases, waste resources, and erode trust in the judiciary. The undersigned reminds counsel that in order to fulfill its duty of candor to the Court, counsel must ensure it pays attention to detail in all communications with Plaintiff moving forward.

For docket management purposes, the Court ORDERS the following. First, the Court STRIKES the Order granting Defendant’s purported unopposed Motion. ECF No. 10. Second, the Court directs the Clerk’s Office to re-open Defendant’s initial Motion for Permission to File a CD of Telephone Call Recordings. ECF No. 9. The Court notes for both parties that it is aware that although that Motion states it is unopposed, Plaintiff does in fact oppose the Motion. As such, Plaintiff is ORDERED to file a Response in opposition to the Motion for Permission to File a CD of Telephone Call Recordings no later than February 23, 2024. The Court will therefore DENY Plaintiff’s Motion to Strike the original Motion as MOOT.

IT IS SO ORDERED this the 9th day of February, 2024.

**s/Jon A. York**  
UNITED STATES MAGISTRATE JUDGE